

立法會
Legislative Council

LC Paper No. CB(2)549/05-06
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by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 17 October 2005 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present :

- Dr Hon LUI Ming-wah, SBS, JP (Chairman)
- Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Hon Albert HO Chun-yan
- Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
- Hon LEE Cheuk-yan
- Hon Martin LEE Chu-ming, SC, JP
- Hon Margaret NG
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon CHEUNG Man-kwong
- Hon Bernard CHAN, JP
- Hon CHAN Kam-lam, SBS, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Hon LEUNG Yiu-chung
- Hon WONG Yung-kan, JP
- Hon Howard YOUNG, SBS, JP
- Dr Hon YEUNG Sum
- Hon LAU Kong-wah, JP
- Hon Miriam LAU Kin-ye, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon CHOY So-yuk, JP
- Hon TAM Yiu-chung, GBS, JP
- Hon Abraham SHEK Lai-him, JP
- Hon LI Fung-ying, BBS, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon LEE Wing-tat
- Hon Alan LEONG Kah-kit, SC
- Hon LEUNG Kwok-hung
- Dr Hon KWOK Ka-ki
- Dr Hon Fernando CHEUNG Chiu-hung

Hon CHEUNG Hok-ming, SBS, JP
Hon TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin

Members attending : Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP

Members absent : Dr Hon David LI Kwok-po, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Daniel LAM Wai-keung, BBS, JP
Hon MA Lik, GBS, JP
Hon WONG Ting-kwong, BBS
Hon TAM Heung-man

Public Officers attending : Item III

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement MAK Ching-hung
Permanent Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Ms Grace LUI Kit-yuk
Deputy Secretary for Constitutional Affairs

Mr Arthur HO Kin-wah
Head, Hong Kong Guangdong Cooperation Coordination
Unit

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mrs Eleanor CHOW
Senior Council Secretary (2)4

Ms Fanny LO
Legislative Assistant (2)3

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I. Information paper issued since the last meeting

Members noted that the paper on "Establishment of office for former Chief Executives" (LC Paper No. CB(2)54/05-06(01)) had been issued since the last meeting.

2. Ms Audrey EU said that the recurrent expenditure of \$2.2 million for establishing an office to provide support services to former Chief Executives (CEs), which included the staff costs for three secretarial and clerical staff and a driver, as well as the operating expenses of the office, was quite substantial. As there was only one former CE at present, she asked whether the same office would provide services for future former CEs. Secretary for Constitutional Affairs (SCA) replied in the affirmative. He further said that the staff complement provided for the office was of junior grade. He assured members that the Administration would keep under review the operation of the office, in the light of the practical experience gained in the next few years.

II. Items for discussion at the next meeting

(LC Paper No. CB(2)28/05-06(01) – List of outstanding items for discussion)

3. Members noted that the next meeting would be held on 21 November 2005. Members agreed that the duration of regular meetings of the Panel would be three hours, same as that in the last session.

4. SCA proposed and members agreed to discuss the establishment of Mainland Affairs Liaison Office (MALO) at the next meeting. Members also agreed that members of the Panel on Commerce and Industry and the Panel on Security should be invited to attend the meeting for discussion of the item.

5. Ms Emily LAU said that in his 2005-06 Policy Address, CE had indicated that he accepted the need for his office to be subject to anti-corruption regulation. Members might wish to discuss the issue at the next meeting. Dr YEUNG Sum, Chairman of the Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to the Chief Executive, advised that the

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Administration would report to the Subcommittee on 1 November 2005 on whether and how bribery prevention provisions should apply to CE. He said that after the Subcommittee had concluded its study, a report would be made to the Panel.

III. Briefing by the Secretary for Constitutional Affairs on the Chief Executive's 2005-06 Policy Address

(Address by the Chief Executive at the Legislative Council meeting on 12 October 2005 – "Strong Governance For the People")

The 2005-06 Policy Address – "Policy Agenda"

LC Paper No. CB(2)28/05-06(02) – Paper provided by the Administration on "2005-06 Policy Agenda")

6. SCA briefed members on the initiatives of the Constitutional Affairs Bureau (CAB) as set out in the paper on "2005-06 Policy Agenda".

Issues raised by members

Constitutional development for 2007 and 2008

7. Dr YEUNG Sum said that he was given to understand that under the Administration's proposals for the methods for selecting the CE in 2007 and for forming the Legislative Council (LegCo) in 2008 (the "electoral methods"), the participation of members of the District Councils (DCs) would enhance the representativeness in the Election Committee and LegCo. All the 529 DC members, including the 102 appointed members, would be included in the Election Committee. Dr YEUNG said that the Democratic Party could not in principle support the proposals. He pointed out that there might be conflict of interest as the DC members appointed by a CE would likely vote for him if he sought re-election in a subsequent term. In addition, the Administration provided no timetable for implementing universal suffrage. Dr YEUNG considered that the Administration's proposals were not a step forward towards democracy.

8. SCA said that details of the proposals for the "electoral methods" would be covered in the Fifth Report of the Constitutional Development Task Force (the Task Force) to be published shortly. The proposals would mark a key milestone in the development of democracy in Hong Kong. Given that Annex I and Annex II to the Basic Law provided that any amendments to the "electoral methods" to be introduced by the Government of the Hong Kong Administrative Region (HKSAR) required the endorsement of a two-thirds majority of LegCo Members and the consent of CE, and must be reported to the Standing Committee of the National People's Congress for approval and for record

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respectively before they could take effect, the Administration would make the best endeavour to gain support from Members and the community on the proposals.

9. Dr YEUNG Sum expressed concern that the legislative proposal to amend the "electoral methods" would be classified as an "important bill", with the result that Article 50 of the Basic Law (BL 50) might be invoked in the event that the bill was not passed by LegCo. SCA explained that the concept of "important bill" would only apply to local legislation and not amendments to Annexes I and II to the Basic Law which was a constitutional document.

10. Mr LEUNG Kwok-hung said that CE should resign as required under BL 52, if the proposals for the "electoral methods" were not passed by LegCo.

11. Mr TONG Ka-wah asked how the Administration intended to gain support from LegCo and the public. Mr LEE Wing-tat asked whether SCA, being the responsible principal official (PO), would resign if the proposed package was vetoed by LegCo. He pointed out that in the United Kingdom, the Government, if defeated on the Finance Bill or an important bill, would either resign or seek a dissolution of the Parliament.

12. SCA said that the proposed package was formulated after an extensive public consultation exercise conducted by the Task Force following the release of the Fourth Report. The Administration had the responsibility to introduce proposals to amend the "electoral methods" in Annexes I and II to the Basic Law so as to take forward constitutional development, and LegCo also had the responsibility to take into account the views of the community in considering the proposals. The passage of the proposals for the "electoral methods" required the concerted effort of the Administration and LegCo. He reiterated that the Administration would strive to gain the support of LegCo and the public.

Relationship between the Executive and the Legislature

13. Ms Emily LAU expressed concern that CE's Policy Address did not make any proposals to improve the relationship between the Executive and the Legislature. She asked whether the Administration would consider the suggestion of the former Governor, Mr Chris PATTEN, that Members representing major political parties and groups should have regular meetings with the Administration to exchange views on formulation of major policies. Ms LAU pointed out that the arrangement would ensure that major policies could be implemented with the support of political parties.

14. SCA said that at present, there were channels for the Administration to listen to the views of Members. For example, LegCo Panels provided the forum for the Administration and Members to exchange views on policy issues. The Chairman of the House Committee also held weekly meetings with the Chief

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Secretary for the Administration (CS) on proposals to be introduced by the Administration into LegCo. In future, the Administration would undertake a number of initiatives to canvass views from a broad spectrum of society, including expanding the membership of the Commission on Strategic Development.

15. Ms Miriam LAU, in her capacity of the Chairman of the House Committee, clarified that during her weekly meetings with CS, discussion was confined to items which had been placed on the agenda of the House Committee meetings. She concurred with Ms Emily LAU that CE's Policy Address lacked measures to improve the relationship between the Executive and the Legislature.

Review of role, functions and composition of DCs

16. Mr LEE Wing-tat said that when the two municipal councils were abolished in 1999, Mr Michael SUEN, the then SCA, had said that the powers and functions of the municipal councils would be devolved to DCs. However, the functions of DCs had not been enhanced after a lapse of six years. He asked about the reasons for the delay.

17. SCA said that following the abolition of the two municipal councils in 1999, the Home Affairs Bureau (HAB) had conducted a review and made recommendations to enhance the role and functions of DCs. Resources were also allocated for projects previously planned by the two municipal councils. SCA further said that as set out in the Policy Address, the role of DCs would be enhanced. The Government would allow each DC to assume responsibility for the management of some district facilities, such as libraries, community halls, leisure grounds, sports venues and swimming pools. The working group formed under HAB and CAB would conduct a review on the role, functions and composition of DCs. Public consultation on the review was expected to commence in the first quarter of 2006. Meanwhile, the Administration would take into account any views from Members in drawing up its recommendations.

18. Mr Patrick LAU said that many DCs had their own characteristics and should be given more power and resources for the purpose of improving the environment and facilities in the districts. For instance, a percentage of the revenue from Government rent could be apportioned for development of facilities in the districts.

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19. SCA said that he would relay Mr LAU's views to HAB. At present, funding was provided to DCs for implementation of works projects at the district level.

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Establishment of MALO and increased representation in Mainland and Regional Co-operation

20. Mr Martin LEE said that boundary control operation, trade and economic co-operation between the Mainland and Hong Kong were issues outside the policy portfolios of CAB, and hence this Panel. He questioned why the establishment of MALO should come under CAB and not the Commerce, Industry and Technology Bureau (CITB), and whether CAB intended to change its name after taking on the function of overseeing the work of MALO.

21. SCA said that CAB had no intention to change its name. He explained that MALO was merely an extension of the existing functions of CAB. Since reunification, CAB had been responsible for dealing with the work relating to the liaison between the Government of HKSAR and the relevant departments of the Central Authorities. On regional co-operation, CAB had been co-ordinating the handling of important issues such as the Pan-Pearl River Delta (PPRD) Regional Co-operation Framework Agreement (the Agreement), and providing the necessary secretariat service required by the Hong Kong side in these activities.

22. SCA further said that regional co-operation covered not only trade and commerce, but also security, infrastructure links, education, health and food, etc. With the increasingly closer co-operation between the Mainland and Hong Kong, there was a need for the HKSAR Government to strengthen its presence in the Mainland. The HKSAR Government had already established the Beijing Office (BJO) and the Guangdong Economic and Trade Office (ETO). To strengthen Hong Kong's representation in the Mainland, it was proposed to establish ETOs in Chengdu and Shanghai.

23. SCA added that one of the purposes of establishing MALO was to co-ordinate Hong Kong's regional co-operation initiatives with the relevant Mainland authorities and oversee the HKSAR's offices in the Mainland. CAB would be responsible for the setting up of ETOs in Chengdu and Shanghai. CITB and the Security Bureau would respectively continue to oversee the functions of individual Mainland offices regarding economic and trade relations and investment promotion, and the provision of assistance to Hong Kong residents in distress in the Mainland. SCA said that CAB would submit a proposal on the establishment of MALO for discussion by the Panel at the next meeting, and suggested that the Panel on Commerce and Industry and the Panel on Security be invited to attend the meeting. However, the Administration would brief the Panel on Commerce and Industry on matters relating to ETOs in future. Mr Martin LEE said that the arrangement was unacceptable.

24. Mr CHAN Kam-lam expressed concern that ETOs in the Mainland had to report to two bureaux, i.e., CAB and CITB, in the future. Mr CHAN also asked about the financial implications of the establishment of MALO and ETOs.

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25. SCA explained that under the existing arrangement, ETOs in overseas offices also had to report on different aspects of their work to different bureaux. After the establishment of MALO, CITB would continue to be responsible for the ETOs' functions relating to economic and trade relations and investment promotion such as the implementation of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA). CAB would be responsible for formulating the overall strategy and direction with regard to regional co-operation initiatives, prioritising different co-operation initiatives, and keeping an overall view on the general liaison functions of BJO and ETOs in the Mainland. SCA said that additional resources would be sought for the establishment of MALO and the new ETOs. The Administration would brief the relevant Panels on its proposal in due course.

26. Mr Jasper TSANG asked why the Administration had chosen to set up ETOs in Chengdu and Shanghai, and not Chongqing and Nanjing, for the southwestern and eastern regions respectively. He also asked whether the Administration had promoted exchanges with the Government of the Macao Special Administrative Region (MSAR).

27. SCA explained that Shanghai was chosen because it was the economic and trading centre in the eastern region. Chengdu was the provincial capital of Sichuan which was the largest western province in the PPRD Region. SCA further said that there were constant co-operation and exchanges of information between the governments of HKSAR and MSAR in many areas.

28. Mr Jasper TSANG commended on the efficient logistical support provided by the Administration for Members' recent visit to Guangdong. Since CE had encouraged Members to have more contacts with the Mainland, Mr TSANG enquired whether MALO would provide similar logistical support for LegCo delegations visiting the Mainland, such as arranging transportation and accommodation, and lining up appointments with the relevant departments of the Mainland authorities.

29. SCA responded that for official visits, the Administration could provide advice and assistance regarding formulation of visit programme as appropriate. He believed that the LegCo Secretariat would provide the necessary support for Members' delegations.

30. Mr LAU Kong-wah doubted whether the co-operation between Hong Kong and Guangdong had become increasingly effective, as described in paragraph 21 of the Administration's paper. He pointed out that the two sides had only recently agreed to step up co-operation in information sharing on food safety following the presence of malachite green in fresh water fishes imported from the Mainland. In other areas such as infrastructure links, the two sides were taking different pace in developing the Hong Kong-Shenzhen Western Corridor

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and the Guangzhou-Shenzhen-Hong Kong Express Rail Link. He asked whether there was a comprehensive plan to promote co-operation between the two sides on focused areas.

31. SCA explained that the co-operation mechanism between Guangdong and Hong Kong had become more effective in the last couple of years as evidenced by progress made in different areas. These included implementation of the round-the-clock operations of the Lok Ma Chau Boundary Control Point, taking forward cross-boundary infrastructure projects, enhancing the efficiency of cargo flow, etc. As regards large-scale infrastructure projects such as the Hong Kong-Shenzhen Western Corridor, the Guangzhou-Shenzhen-Hong Kong Express Rail Link and the Hong Kong-Zhuhai-Macao Bridge, continued discussion between the two sides was necessary to narrow differences and ensure smooth implementation. SCA further said that senior officials of the HKSAR and Guangdong governments valued the co-operation of the two sides. Through the concerted effort of the two governments, the scope of co-operation kept expanding. The experience gained in the Hong Kong and Guangdong co-operation could apply to PPRD Region.

32. Mrs Selina CHOW asked whether MALO would assist in liaising the implementation of co-location clearance facilities in the Hong Kong-Shenzhen Western Corridor, and advocated that these facilities should be extended to other border check points as soon as practicable. She also urged that MALO should render assistance to Hong Kong residents who were in distress in the Mainland.

Adm 33. SCA said that given that the concept of co-location clearance facilities in the Hong Kong-Shenzhen Western Corridor was totally new, it was necessary to review the operation before deciding on whether or not to extend the arrangement to other border check points. He would relay Mrs CHOW's concern to the Security Bureau. As regards assistance to Hong Kong residents in distress in the Mainland, SCA said that the caseload had been increasing in recent years. The number of cases in 2002, 2004 and the first nine months of 2005 were around 1 000, 3 600 and 3 200 respectively. In view of the fact that some 80% of these cases occurred in Guangdong, the Administration was studying the feasibility of stationing immigration officers in the Guangdong ETO to deal with these cases. As regards problems arising from commercial disputes, they were usually more complex. In handling these cases, the BJO and Guangdong ETO would make available a list of Mainland law societies to the individuals or companies concerned, to facilitate them to resolve the disputes through the legal channels in the Mainland.

Further development of the political appointment system

34. Referring to the proposal of creating new non-civil service positions (such as assistants to Directors of Bureaux), Mr Howard YOUNG pointed out that Directors of Bureaux were already assisted by Administrative Assistants

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(AAs) who were Administrative Officers, and questioned the need to create a new layer of political positions. Miss LI Fung-ying concurred with Mr YOUNG and asked about the number of posts to be created.

35. SCA explained that one of the objectives of the Accountability System for POs was to enhance effective governance by appointing the best and most suitable persons to take up the position of POs. Since the implementation of the system three years ago, persons from within and outside the civil service had been appointed as POs. The Administration intended to further develop the political appointment system by creating non-civil service positions dedicated to political affairs. This would provide a new channel for people with political aspirations to join the Government to pursue a political career. The scheme also allowed civil servants who aspired to pursue a political career to leave the civil service to take part in politics. On demarcation of duties between AAs and political appointees, SCA explained that AAs were mainly responsible for assisting Directors of Bureaux in policy matters and co-ordinating the work of the bureau, and they had done a professional and outstanding job in this respect. Political appointees would mainly concentrate on political liaison work. It was expected that only a small number of additional political positions would be created.

36. Mr LEUNG Yiu-chung and Dr KWOK Ka-ki asked about the criteria for appointment as political appointees and stressed that the system of appointment must be open and fair. Mr LEUNG asked about the ranks of positions to be created under the proposal and how implementation of the proposal could prepare for Hong Kong's constitutional development as stated in the Administration's paper.

37. SCA said that the Administration was aware that some members of the community and the civil service had concerns about the proposal of creating new positions to be responsible principally for political work. The Administration would formulate a comprehensive package of proposals and issue a consultative document in the first half of 2006 to canvass views of the civil service, political groups and the community, so that any proposals put forth would take heed of the concerns of the community. The Administration would consider appointments of people from various sectors, including the political, professional and business sectors as well as the civil service.

38. SCA stressed that the creation of political appointees should not undermine the integrity and interests of the civil service system. The fine traditions of the permanent, professional and politically neutral civil service would be preserved. Civil servants would continue to serve the community by assisting POs in formulating and implementing policies and delivering service to the public in an impartial and professional manner. As regards the political appointees, their political career path might cover various stages. Initially, those with political aspirations would be given the opportunity to assume

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middle-ranking government positions, such as Assistants to Directors of Bureaux. At a later stage, after working for the Government for a certain period of time to gain some experience, they might stand for elections as an independent candidate or a member of a political party. They might eventually be appointed to the Government to assume higher positions such as Directors of Bureaux. In the longer term, the arrangements would help to provide more opportunities for public participation in political affairs and widen the pool of political talents.

39. Ms Audrey EU said that she had reservation about the proposal and pointed out that SCA was giving conflicting views. On the one hand, SCA commended AAs for providing good support to Directors of Bureau and on the other hand, new positions were proposed to be created for the same purpose. Ms EU said that the proposal was against the current political development, which was moving towards universal suffrage whereby politically aspired persons should run for direct election rather than appointed to work for the Government. She questioned the aim of the proposal. Mr LEUNG Yiu-chung and Mr LEE Cheuk-yan concurred with Ms EU and asked whether it was the Administration's intention to form a government party in an attempt to consolidate its power and position.

40. SCA disagreed that he was giving conflicting views. He explained that even if the Government put forth constructive policy proposals, it still needed to reach out to different spheres and sectors actively in order to secure public support. Unlike the politically-neutral AAs, politically appointed officials could assist in reaching out to various social sectors more actively, and seek wider and more solid support for Government policies. This could only be achieved by sustained and conscientious efforts over an extended period. SCA clarified that the Administration had no intention to form a government party. He said that the proposal sought to groom political talents to prepare for Hong Kong's further constitutional development, and that it did not go against the ultimate aim of universal suffrage.

IV. Any other business

Proposed visit of the Panel to Beijing

(LC Paper No. CB(2)14/05-06(01) – Letter dated 10 October 2005 from pan-democratic LegCo Members)

41. Members noted that pan-democratic LegCo Members had proposed to form a delegation to visit Beijing for the purpose of exchanging views with officials of the Central Authorities on constitutional development and the "electoral methods". Members belonging to the Democratic Party, Article 45 Concern Group, the Democratic Alliance for the Betterment and Progress of Hong Kong, the Frontier and the Liberal Party expressed support for the visit.

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Members belonging to The Alliance considered that the visit should not be conducted in the name of the Panel and said that they did not support the proposal.

42. Mr TONG Ka-wah said that the visit should be arranged as soon as possible. Ms Emily LAU requested the Administration to assist in arranging the visit. Mr Jasper TSANG suggested that the Chairman should write to the Administration on behalf of the Panel to follow up the matter.

(Post-meeting note : The Chairman's letter was sent to the SCA on 21 October 2005. SCA replied on 3 November 2005 that the Government had relayed the Panel's request to the Central Authorities for consideration and would stay in touch with the LegCo Secretariat on the matter.)

43. As the majority of the members present at the meeting supported the proposal, members agreed that the Panel should seek the permission of the House Committee in accordance with Rule 22(u) of the House Rules in due course.

44. The meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
29 November 2005